

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Amina Johnson,

Plaintiff

v.

General Dynamic Information Technology,

Defendant

Case No. 2:24-cv-02033-CDS-EJY

Order Overruling Objection and Accepting  
in Part and Modifying in Part the  
Magistrate Judge's Report and  
Recommendation, Denying Plaintiff's  
Motion to Amend a Second Amended  
Complaint, Striking Plaintiff's Second and  
Third Amended Complaints, Denying as  
Moot Defendant's Motions to Dismiss,  
Denying as Premature Plaintiff's Motion for  
Summary Judgment and Motion for  
Judgment on the Pleadings, and Denying as  
Moot Plaintiff's Motion to Refuse Early  
Neutral Evaluation

[ECF Nos. 14, 24, 25, 30, 47, 53, 57, 58, 60]

This is a discrimination action brought by pro se plaintiff Amina Johnson. On April 4, 2025, United States Magistrate Judge Elayna Youchah issued a report and recommendation (R&R) that this court deny Johnson's motion to amend the complaint until after the pending motion to dismiss is resolved. R&R, ECF No. 57. Therein, Judge Youchah finds that the motion to amend fails for two reasons: (1) it fails to comply with Local Rule 15-1(a) which requires that the moving party "attach the proposed amended pleading to a motion seeking leave of the court to file an amended pleading," and (2) that even if the motion is construed as a proposed second amended complaint, it fails to comply with Rule 8 of the Federal Rule of Civil Procedure. *See id* at 2.

On April 11, 2025, Johnson filed an objection to the R&R, arguing that she has a right to amend as a matter of course, that her disability status has been confirmed, that the already-filed third amended complaint resolves any Rule 8 and 15 pleading deficiencies, and finally, that denying the motion to amend until after the court resolves the pending motion to dismiss

1 prejudices her. *See* Obj., ECF No. 59. General Dynamics filed a response to Johnson’s objection,  
2 arguing that the magistrate judge’s recommendation is appropriate, and further that Johnson  
3 inappropriately filed the third amended complaint. Resp., ECF No. 63.

4 For the reasons set forth herein, I overrule Johnson’s objection and accept in part and  
5 modify in part the R&R. Further, I strike the second and third amended complaints (ECF Nos.  
6 24, 58), so General Dynamics’s motions to dismiss (ECF No. 25, 60) are denied as moot. I grant  
7 in part Johnson’s motion to amend (ECF No. 53) and give Johnson limited leave to file a second  
8 amended complaint, as set forth in this order. Also, because this action is still pending, I extend  
9 the deadline for filing an amended pleading, and for the reasons set forth herein, I deny Johnson’s  
10 motion for judgment on the pleadings (ECF No. 14) and motion for summary judgment (ECF  
11 No. 30). Last, I deny Johnson’s motion to refuse early neutral evaluation (ENE) (ECF No. 47) as  
12 moot.<sup>1</sup>

13 **I. Discussion**

14 **A. Johnson’s objection to the R&R is overruled.**

15 On March 14, 2025, Judge Youchah issued an order and R&R that Johnson’s motion to  
16 amend (ECF No. 42) be denied, but that she be given limited leave to amend. ECF No. 52.  
17 Therein, the magistrate judge determined that Johnson “failed to exhaust her claims of  
18 discrimination and retaliation against GDC” (General Dynamics Corporation) because the  
19 named respondent in the EEOC charge was “General Dynamics Information Technology”  
20 (GDIT). *Id.* at 2–3. Judge Youchah determined that granting leave to amend as to GDC would be  
21 futile because “nothing would suggest that any entity other than GDIT was allegedly  
22 responsible for the conduct” and “[n]othing before the Court suggests that GDC ever received  
23 [notice of the EEOC charge] let alone had an opportunity to respond to the Charge.” *Id.*

---

24  
25 <sup>1</sup> On February 10, 2025, Magistrate Judge Daniel Albregts sua sponte exempted this case from ENE,  
26 finding that it would be futile. Min. order, ECF No. 49. As a result, Johnson’s motion to refuse early  
neutral evaluation is moot and denied accordingly.

(comparing ECF No. 43-2, with ECF No. 42 at 4, ¶ 2). However, Judge Youchah also determined that granting Johnson leave to amend her negligence claim against GDC was not futile. *Id.* at 3–4. Rather, she determined that the allegations in the proposed amended complaint fail to state a viable negligence claim, but “assuming she can state a negligence claim against GDC, [Johnson] must also assert a basis for the federal court to exercise jurisdiction over such claims.” *Id.* at 4.

Before that R&R could be considered by the district court, Johnson filed a motion to amend the complaint on March 19, 2025.<sup>2</sup> ECF No. 53. On March 31, 2025, Chief Judge Andrew Gordon<sup>3</sup> accepted the March 14, 2025 R&R. Order, ECF No. 54. On April 4, 2025, Judge Youchah issued another R&R recommending that I deny the motion to file a second amended complaint, and further that no amendment be permitted until the motion to dismiss is resolved. *See* R&R, ECF No. 57. A week later, Johnson filed a third amended complaint (ECF No. 58) and an objection to the R&R (ECF No. 59).

A district court has jurisdiction to review a magistrate judge’s report and recommendation on dispositive matters. Fed. R. Civ. P. 72(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (“The statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations de novo if objection is made, but not otherwise.”). Under the de novo standard, the magistrate judge’s findings and recommendations are independently reviewed to determine whether they are clearly erroneous or contrary to law.

After reviewing Judge Youchah’s R&R, I find that Johnson’s objection does not demonstrate that Judge Youchah’s findings and recommendations are clearly erroneous or

---

<sup>2</sup> Johnson did not file any objection or appeal to Judge Youchah’s March 14, 2025 order and R&R.

<sup>3</sup> This case was administratively reassigned to me on April 29, 2025. ECF No. 66.

1 contrary to the law. Johnson’s argument that she is permitted to amend her complaint under  
2 Rule 15 is misguided. Generally, a party may amend its pleading **once** “as a matter of course”  
3 within twenty-one days of serving it, or within twenty-one days after service of a responsive  
4 pleading or motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1). Otherwise, “a party may  
5 amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R.  
6 Civ. P. 15(a)(2); *see also* LR 15-1(a) (“Unless the court orders otherwise, the moving party must  
7 attach the proposed amended pleading to a motion seeking leave of the court to file an amended  
8 pleading. The proposed amended pleading must be complete in and of itself without reference to  
9 the superseded pleading and must include copies of all exhibits referred to in the proposed  
10 amended pleading.”). Here, Johnson filed an amended complaint on November 6, 2024. FAC,  
11 ECF No. 8. Thus, Johnson has already exercised her right to amend **one time**. Thereafter, on  
12 December 6, 2024, and without leave of court, Johnson filed a second amended complaint (ECF  
13 No. 24) and then a third amended complaint (ECF No. 58) on April 11, 2025.

14 The remainder of Johnson’s arguments do not demonstrate that Judge Youchah’s  
15 decision was clearly erroneous or contrary to the law. Rather, Johnson summarily contends that  
16 the improperly filed third amended complaint complies with Rule 15 of the Federal Rules of  
17 Civil Procedure, and further states that she has received confirmation of disability from the  
18 Social Security Administration and that denying amendment until the motion to dismiss is  
19 resolved would prejudice her. ECF No. 59 at 1–2. Because I do not find Judge Youchah’s  
20 recommendations clearly erroneous or contrary to law, Johnson’s objection is overruled.<sup>4</sup>

21 However, considering Rule 15’s policy favoring amendments to pleadings that is  
22 generally applied with “extreme liberality,” the R&R is accepted in part and modified in part. As  
23 recommended, Johnson’s motion for a second amended complaint (ECF No. 53) is denied. She  
24 is, however, granted leave to file a motion to file a second amended complaint (SAC) as set forth

---

25 <sup>4</sup> Because I am striking these complaints, defendant’s motions to dismiss them (ECF Nos. 25, 60) are  
26 denied as moot.

1 in the March 14, 2025 order and R&R.<sup>5</sup> If Johnson elects to file the motion to file a SAC, she is  
 2 reminded that the motion must include the proposed SAC, in accordance with Local Rule 15-  
 3 1(a), and it must be filed by June 9, 2025.<sup>6</sup> Further, the proposed SAC must be titled “Second  
 4 Amended Complaint,” must comply with the Federal Rules of Civil Procedure, and must state a  
 5 cognizable claim for relief against each defendant. The proposed SAC **must be complete in and**  
 6 **of itself**, must not refer in any manner to *any* prior complaint,<sup>7</sup> and must include: (1) all claims,  
 7 and the factual basis in support of all claims, she wishes to assert against GDIT, (2) all claims  
 8 she seeks to assert against GDC (except for those precluded by this order), and (3) the basis for  
 9 the Court’s exercise of jurisdiction over any claim asserted against GDC.<sup>8</sup> In accordance with  
 10 the March 31, 2025 order accepting the report and recommendation: Johnson is precluded from  
 11 reasserting discrimination or retaliation claims against General Dynamics Corporation because  
 12 she failed to exhaust her administrative remedies. *See* Order, ECF No. 54. If no renewed motion  
 13 to amend with an attached, proposed second amended complaint is filed by June 9, 2025, this

14  
 15 \_\_\_\_\_  
 16 <sup>5</sup> This court extends the deadline to file the motion for leave to file a SAC from April 4, 2025, to June 9,  
 2025.

17 <sup>6</sup> The court also sua sponte extends the date to file amended pleadings **only** from May 7, 2025, to June 9,  
 2025, to permit compliance with this order. *See* Order granting def.’s disc. plan and scheduling order, ECF  
 No. 40 at 2.

18 <sup>7</sup> Ninth Circuit case law makes clear that a plaintiff may not simply refer to a previous complaint, so  
 19 amended complaints must include all relevant facts even if they were previously asserted in an earlier  
 complaint. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012) (“[T]he general rule is that an  
 20 amended complaint supersedes the original complaint and renders it without legal effect . . .”).

21 <sup>8</sup> There are two types of federal jurisdiction: (1) federal question and (2) diversity. Federal-question  
 22 jurisdiction exists in civil actions “arising under the Constitution, laws, or treaties of the United States.”  
 28 U.S.C. § 1331. Federal question jurisdiction exists only when a federal question is presented on the face  
 23 of the plaintiff’s properly pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Diversity  
 24 jurisdiction exists when there is “complete diversity among the parties **and** an amount in controversy in  
 25 excess of \$75,000.” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 415 (9th Cir. 2018) (citing 28 U.S.C. §  
 1441(a)) (emphasis added). “Federal jurisdiction must be rejected if there is any doubt as to the right of  
 26 removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of  
 establishing federal jurisdiction falls to the party invoking the statute. *Thompson v. McCombe*, 99 F.3d 352,  
 353 (9th Cir. 1996) (“A party invoking the federal court’s jurisdiction has the burden of proving the actual  
 existence of subject matter jurisdiction.”). Here, the burden of establishing proper federal jurisdiction lies  
 with Johnson.

1 case will proceed against GDIT based on the current operative complaint, which is docketed at  
2 ECF No. 8.

3 **B. Johnson’s motions for judgment on the pleadings and summary judgment**  
4 **are denied without prejudice as premature.**

5 Federal Rule of Civil Procedure 12(c) provides that: “After the pleadings are closed—but  
6 early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P.  
7 12(c). A motion for judgment on the pleadings “challenges the legal sufficiency of the opposing  
8 party’s pleadings and operates in much the same manner as a motion to dismiss under Rule  
9 12(b)(6).” *Morgan v. Cnty. of Yolo*, 436 F. Supp. 2d 1152, 1154–55 (E.D. Cal. 2006), *aff’d*, 277 F. App’x  
10 734 (9th Cir. 2008). As established by this order, the pleadings are not yet closed because  
11 Johnson has been given an opportunity to amend the complaint, which requires her establish  
12 federal jurisdiction if she elects to bring claims against GDC. Consequently, Johnson’s motion  
13 for judgment on the pleadings (ECF No. 14) is denied without prejudice as premature.

14 Further, discovery in this action has only recently commenced. Although Rule 56 of the  
15 Federal Rules of Civil Procedure allows a party to file a motion for summary judgment “at any  
16 time,” that same rule also allows the court, as is just, to deny the motion or order a continuance  
17 for the opposing party to pursue discovery. Fed. R. Civ. P. 56. “Although [Federal Rule of Civil  
18 Procedure 56] allows a motion for summary judgment to be filed at the commencement of an  
19 action, in many cases the motion will be premature until the nonmovant has had time to file a  
20 responsive pleading or other pretrial proceedings have been had.” Fed. R. Civ. P. 56, Advisory  
21 Comm.’s Notes (2010 Amendments, Note to Subdivision (b)). Indeed, many courts have denied  
22 pre-answer and pre-discovery motions for summary judgment as premature despite technical  
23 compliance with the timing provisions of Rule 56. *See Williams v. Yuan Chen*, 2011 WL 4354533, at  
24 \*3 (E.D. Cal. Sept. 16, 2011) (denying plaintiff’s summary judgment motion as premature where  
25 defendant had not yet filed an answer and the court had not issued a discovery order); *Moore v.*  
26

1 *Hubbard*, 2009 WL 688897, at \*1 (E.D. Cal. Mar. 13, 2009) (recommending that plaintiff's motion  
2 for summary judgment be denied as premature where "discovery ha[d] not yet begun,  
3 defendants ha[d] not yet filed an answer and the court ha[d] yet to issue a discovery and  
4 scheduling order"); *Bradford v. Ogbuehi*, 2020 WL 9886194, at \*1 (E.D. Cal. Feb. 20, 2020) (denying  
5 summary judgment motions as premature even though plaintiff "technically" met the timing  
6 requirements, the pleadings in the case were "not yet set"). Thus, Johnson's motion for summary  
7 judgment (ECF No. 30) is denied without prejudice as premature.

8 **C. Johnson is cautioned she must comply with all court orders and rules.**

9 Although Johnson's pro se status requires the court to review her filings and pleadings  
10 less stringently than her represented counterparts, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007),  
11 this does not excuse her from following the requirements and rules that a represented party  
12 must follow. This includes following court orders, as well as the Federal Rules of Civil  
13 Procedure and this district's Local Rules. Indeed, the Ninth Circuit held that "[f]ailure to follow  
14 a district court's local rules is a proper ground for dismissal." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th  
15 Cir. 1995). In that same case, the Ninth Circuit noted that "[a]lthough we construe pleadings  
16 liberally in their favor, pro se litigants are bound by the rules of procedure." *Id.* at 54 (citing *King*  
17 *v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)). Accordingly, the court cautions Johnson that she  
18 must comply with the rules and orders of this court, to include the Local Rules, the Federal  
19 Rules of Civil Procedure, and the Federal Rules of Evidence. As a reminder, Local Rule IA 10-3  
20 sets forth the requirements for the filing of exhibits. Her motions for judicial notice and judicial  
21 estoppel fail to comply with that rule. A copy of the Local Rules is available online at  
22 [https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-](https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf)  
23 [Amended-2020.pdf](https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf). Failure to comply with court orders or rules may result in the issuance of  
24 sanctions, to include dismissal of this action.



1 **III. Conclusion**

2 IT IS HEREBY ORDERED that Johnson's objection to the April 4, 2025 report and  
3 recommendation [ECF No. 59] is **OVERRULED**, and the R&R [ECF No. 57] is **accepted in**  
4 **part and modified in part**, as set forth in this order.

5 IT IS FURTHER ORDERED that Johnson's motion for judgment on the pleadings [ECF  
6 No. 14] is **DENIED** without prejudice as premature.

7 IT IS FURTHER ORDERED that the improperly filed second amended complaint and  
8 third amended complaint [ECF Nos. 24 and 58] are **STRICKEN**.

9 IT IS FURTHER ORDERED that General Dynamics Information Technology's motions  
10 to dismiss [ECF Nos. 25, 60] are **DENIED** as moot.

11 IT IS FURTHER ORDERED that Johnson's motion for summary judgment [ECF No.  
12 30] is **DENIED** without prejudice as premature.

13 IT IS FURTHER ORDERED that Johnson's motion to refuse early neutral evaluation  
14 [ECF No. 47] is **DENIED** as moot.

15 IT IS FURTHER ORDERED that Johnson's motion to amend the second amended  
16 complaint [ECF No. 53] is **DENIED**, however Johnson is granted limited leave to amend as set  
17 forth below.

18 IT IS FURTHER ORDERED that Johnson is granted leave to file a motion for leave to file  
19 a second amended complaint. If Johnson elects to file the motion for leave to file a SAC, the  
20 motion must attach a copy of the proposed SAC in accordance with Local Rule 15-1(a), and it  
21 must be filed by **June 9, 2025**. The proposed SAC must comply with the Federal Rules of Civil  
22 Procedure, and it must state a cognizable claim for relief against each defendant. The proposed  
23 SAC **must be complete in and of itself**, must not refer in any manner to *any* prior complaint,  
24 and must include: (1) all claims, and the factual basis in support of all claims, she wishes to  
25 assert against GDIT, (2) all claims she seeks to assert against GDC (except for those precluded  
26



1 by this order), and (3) the basis for the Court's exercise of jurisdiction over any claim asserted  
2 against GDC. Johnson is precluded from reasserting discrimination or retaliation claims against  
3 GDC because she failed to exhaust her administrative remedies.

4 Dated: May 19, 2025

5  
6   
7 Cristina D. Silva  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26